IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 974 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

H K SAIYAD

Appearance:

MR HS MUNSHAW for Petitioner

MR RC JANI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/11/2000

ORAL JUDGEMENT

1. Gujarat State Road Transport Corporation has preferred this petition under Article 227 of the Constitution of India, challenging the order of the Industrial Tribunal, Ahmedabad in Reference No.(IT) 194 of 1987, by which the punishment awarded to the

respondent-workman was set aside by the Industrial Court. The respondent-workman was driving a State Transport bus and on the relevant day, the said bus was passing through Ahmedabad City near Mount Carmel School. At that time, it dashed with one cyclist and thereafter, it dashed with one pedestrian and because of the aforesaid accident, both the aforesaid persons died, i.e. the cyclist and the pedestrian. Thereafter, it dashed with one Pan shop on the road. The respondent was thereafter subjected to departmental proceedings for rash and negligent driving by way of Default Case No.11 of 1976 and on the conclusion of the aforesaid departmental proceedings, he was awarded with punishment of withholding four annual increments with future effect. The aforesaid order was passed on 18th May, 1979. The respondent thereafter had carried the matter in departmental appeals, but the same were rejected. Thereafter, through Union, an Industrial Dispute was raised, being Reference No.973 of 1981, but, as per the say of the respondent, the said Reference was withdrawn by the Union, without his knowledge, on 16.4.1984. Moment he came to know about the same, he raised fresh Industrial Dispute, being Reference (IT) No.194 of 1987.

2. In his application before the Industrial Tribunal the respondent has stated that there was a sudden brake failure which was responsible for the accident in question. He also stated that he was not given proper opportunity to defend his case so far as the departmental proceedings are concerned. Regarding earlier Reference, it was stated that because of internal Union rivalry, without his knowledge, the Reference was withdrawn and the moment he came to know about the same, fresh dispute was raised by him. It was pointed out by the respondent-workman in his application that he was acquitted by the criminal court and it was found by the criminal court that because of failure of the brake, the accident had occurred and that, therefore, the workman cannot be held guilty. It was, therefore, prayed by the concerned workman before the Industrial Tribunal that the Award of punishment of withholding four increments with future effect should be set aside.

3. The aforeaid claim of the workman was resisted on behalf of the State Transport Corporation by way of filing Statement Exhibit 9. It was stated that because of delay, the Reference should be rejected. It was also pointed out that since earlier Reference was withdrawn, the present Reference was not maintainable and the punishment awarded in the departmental proceedings was justifiable and the validity of the punishment was not

challenged. So far as the papers of the departmental proceedings are concerned, it was pointed out that the said papers of the departmental proceedings are not available since they are destroyed and as per the practice, normally, after five years, such papers are destroyed. The aforesaid dispute which was raised by the respondent herein was referred to the Industrial Tribunal under Section 10(1) of the I.D. Act by the Deputy Labour Commissioner, Ahmedabad and accordingly, in view of the aforeaid Reference, the aforesaid dispute was adjudicated by the Industrial Tribunal and the Industrial Tribunal ultimately set aside the order of punishment. The aforesaid Award of the Industrial Tribunal is under challenge in this petition under Article 227 of the Constitution at the instance of the present petitioner.

4. The Industrial Tribunal has observed in the order that the earlier Reference was disposed of in 1984 and, therefore, after five years from that date, the Corporation could have destroyed the record, but, meanwhile, the present Reference was already filed in 1987 and, therefore, it cannot be said that the papers were destroyed during the ordinary course of business of the Corporation. The Tribunal has also found that the concerned workman was subjected to criminal case, being Criminal Case No.803 of 1976, and on 26.11.1976, he was acquitted in the aforesaid case. The said judgment was produced on record by the concerned workman at Exhibit 10. The Industrial Tribunal found that before punishing the concerned workman, the respondent workman was already acquitted by the criminal court and, there is no other evidence which was available with the authority than the one which was subject matter before the criminal court. It was found that the defence of the workman that there was a sudden brake failure was found by the competent criminal court to be a genuine defence and in that view of the matter, no other view was possible in this connection.

5. On behalf of the petitioner also, it is fairly submitted that the accident in question had occurred because of the failure of the brake of the bus. It has been found by the Industrial Tribunal that since the record of the proceedings were destroyed by the S.T. Corporation, it is not possible for coming to the conclusion whether enquiry was conducted in consonance with the principles of natural justice. The Tribunal, therefore, had passed an order at Exhibit 25 by which the Corporation was permitted to lead evidence before the Tribunal in this connection. In spite of the aforesaid order, the Corporation had not led any evidence before

the Tribunal. Considering the aforesaid facts and coupled with the fact that the competent criminal court had already accepted the defence of the workman that there was a sudden brake failure and that because of the aforesaid mechanical defect, the accident in question had occurred and relying on that, when the criminal court had acquitted the workman, the order of the Department in awarding punishment of withholding four increments with future effect was not found to be just and proper. The Tribunal also found that the earlier Reference was withdrawn by the Union without informing the concerned workman and that, therefore, the delay for making Reference was properly explained and, therefore, the Reference was adjudicated on merits. The aforesaid part has been considered by the Tribunal in detail in the Award. Even otherwise, once the matter has already been referred by the Labour Commissioner to the Industrial Tribunal and at the time of Reference also, it seems that no objection was taken by the S.T. Corporation for making such Reference and considering the reasoning given by the Industrial Tribunal in this behalf so far as making of fresh Reference after considering the question about delay, I do not think that any error of law can be said to have been committed by the Tribunal in adjudicating the said disputes and passing the impugned order.

6. The Tribunal also found that the bar of Order II Rule 2 of CPC is not applicable so far as the adjudication by the Industrial Tribunal or Labour Court is concerned. Even otherwise, there is proper justification given by the workman as to why the earlier Reference was withdrawn by the Union which was made at his instance. There was no adjudication on merits so far as the earlier Reference was concerned. I, therefore, do not find any substance in the present Special Civil Application when respondent-workman was acquitted on merits by accepting his defence about failure of brake and even though opportunity was given, the petitioner herein has not led any evidence before the Industrial Tribunal and, therefore, it cannot be said that the order of the Tribunal suffers from any infirmity. Powers of this Court under Article 227 of the Constitution are not that of appellate powers and considering the reasonings given by the Industrial Tribunal, it cannot be said that any error of law is committed by the Tribunal. The Tribunal has given cogent reasons for coming to the conclusion and for setting aside the punishment awarded by the Department. Under the aforesaid circumstances, I do not find any substance in this petition. Petition is, therefore, dismissed. Rule is discharged. Interim

relief is vacated.

November 7, 2000 (P.B. Majmudar, J.)

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(apj)